

 <p>MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES CHILD AND ADULT CARE FOOD PROGRAM</p> <p>Sponsoring Organizations of Homes POLICY & PROCEDURE MANUAL</p>	ISSUED 7/90	REVISED 7/14	CHAPTER 5	SECTION 5.5
CHAPTER Chapter 5 Requirements of Management	SUBJECT Termination of Agreements for Convenience or Cause and the Serious Deficiency Process			

A family child care home provider may be terminated by a sponsoring organization under the following conditions:

Termination of Agreement for Convenience A sponsoring organization may terminate a home for convenience at any time. Reasons for terminating a home for convenience include:

- a. Geographical location of provider (distance is cost-prohibitive for monitoring).
- b. The sponsoring organization is overextended administratively and needs to reduce the size of its program.

Under no circumstances may a home be terminated for convenience by a sponsoring organization as a means of avoiding problems or potential serious deficiencies. In all cases, a sponsoring organization must provide reasonable and plausible justification for terminating a home for convenience. If it is determined by MDHSS-BCFNA that a home has been terminated for convenience as a means to avoid problems or serious deficiencies, the sponsoring organization will be declared seriously deficient in their management of the CACFP. Sponsoring organizations must notify MDHSS-BCFNA in writing within 15 days of terminating a home for convenience. The written notification must also include the justification for terminating the home for convenience.

A home terminated for convenience shall be provided a list of potential sponsoring organizations by the initial sponsoring organization. The home may sign up with another sponsoring organization with no penalty.

If a sponsoring organization terminates a home provider because of location, the sponsoring organization must also terminate all the other home providers enrolled under their sponsorship that are also located in a ten mile radius of that home. A provider may not be singled out and terminated because of location, if there are other providers in the same area.

Termination of Agreement for Cause (Seriously Deficient/Disqualification). A sponsoring organization may terminate a home provider for cause under the following circumstances, as outlined in 7CFR§226.16(1). In all cases, the sponsoring organization must have documentation to support the action taken.

To terminate an agreement for cause, a sponsor must first declare the home seriously deficient. This decision could be based on a history of problems, failure to correct problems, or general poor recordkeeping.

A home may be declared seriously deficient for the following noncompliance issues [7 CFR 226.16(I)(2)]:

- Submission of false information on the application;
- Submission of false claims for reimbursement;
- Simultaneous participation under more than one sponsoring organization;
- Non-compliance with the Program meal pattern;
- Failure to keep required records;
- Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;
- The determination that the provider has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any activity indicating a lack of business integrity as defined by the SA or the concealment of such a conviction;
- Failure to participate in training; and
- Any other circumstance related to non-performance under the sponsoring organization-child care home agreement, as specified by the sponsoring organization or MDHSS-BCFNA.

This list should not be considered to be all-inclusive.

A home may be declared seriously deficient if the sponsoring organization finds Program violations or issues of non-compliance with CACFP requirements at any time during the home's participation. Serious deficiencies that are not permanently corrected will result in the proposed termination and disqualification of the home.

Note that if the serious deficiencies involve an imminent threat to the health and safety of participants or if the provider has engaged in activities that threaten the public health or safety, the home provider is no longer eligible to participate in the CACFP. These situations may also include when the license status of the home is suspended or revoked by the Section for Child Care Regulation. In these situations, the sponsoring organization must immediately suspend the home's CACFP participation. The sponsor will notify the home that its participation has been suspended, that the home has been determined seriously deficient, and that the sponsor proposes to terminate the home's agreement for cause. The sponsor also must provide a copy of the notice to the State agency and follow the procedures outlined in Program regulations [7 CFR §226.16(l)(4)].

If the sponsoring organization determines that a child care home has committed one or more serious deficiency listed above, the sponsoring organization must initiate the serious deficiency process.

There are six steps in the serious deficiency process:

1. Identify the serious deficiencies;
2. Issue a notice of serious deficiency;
3. Receive and assess the home's written Corrective Action Plan (CAP);
4. Issue a notice of temporary deferral of the serious deficiency if the CAP is adequate, or issue a notice of proposed termination and disqualification, including appeal procedures, if the CAP is not adequate (or if no CAP is received);
5. If requested, hold an appeal of the proposed termination and disqualification; and
6. If termination is upheld, issue a notice of final termination and disqualification or if termination is overturned, issue a notice of temporary deferral.

As noted in the steps, once the serious deficiency(ies) is identified, the sponsoring organization must notify the child care home that it has been found to be seriously deficient. The sponsoring organization shall provide a copy of the serious deficiency notice to MDHSS-BCFNA within 15 days of notifying the home of its serious deficiency(ies). The notice must specify:

- The serious deficiency(ies);
- The actions to be taken by the child care home to correct the serious deficiency(ies);
- The time allotted to correct the serious deficiency(ies) (as soon as possible, but not to exceed 30 days);
- That the serious deficiency determination is not subject to administrative review.
- That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the proposed termination of the child care home's agreement and the proposed disqualification of the child care home, the provider and other responsible principals and individuals; and
- That the child care home's voluntary termination of its agreement after having been notified that it is seriously deficient will still result in the home's formal termination by the sponsoring organization and placement of the child care home, the provider, and its responsible principals and responsible individuals on the National Disqualified List (NDL).

In response to the serious deficiency notice, a family child care home must submit a CAP within 30 days (or less if required by the sponsoring organization) that details the processes implemented to ensure that the serious deficiencies have been fully and permanently corrected. The sponsoring organization will evaluate the CAP and determine whether adequate internal controls have been put into place to fully and permanently correct the deficiencies. The sponsoring organization has the discretion to conduct a follow-up review to ensure that the CAP put into place has fully and permanently corrected the serious deficiency.

If the child care home submits a CAP and corrects the serious deficiency(ies) within the allotted time and to the sponsoring organization's satisfaction, the sponsoring organization must notify the home that it has temporarily deferred its determination of serious deficiency. The sponsoring organization must also provide a copy of the notice to MDHSS-BCFNA within 15 days of sending the temporarily deferred notice to the child care home.

Homes that have had seriously deficient determinations that have been temporarily deferred must be monitored one additional time by the sponsor within the first month after temporary deferral of the serious deficiency to assure that the corrections are full and permanent. The monitoring review must be unannounced and unpredictable. This monitoring is in addition to the three regular monitoring reviews for the year.

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies) cited, the sponsoring organization must issue a notice proposing to terminate the child care home's agreement for cause. The notice must explain the child care home's opportunity for an administrative review of the proposed termination in accordance with 7CFR§226.6(l). The sponsoring organization must provide a copy of the notice to MDHSS-BCFNA within 15 days of sending the notice of proposed termination to the child care home. The notice must:

- Inform the child care home that it may continue to participate and receive Program reimbursement for eligible meals served until its administrative review is concluded;
- Inform the child care home that termination of the child care home's agreement will result in the child care home's termination for cause and disqualification; and

- That if the child care home seeks to voluntarily terminate its agreement after receiving the notice of propose to terminate (i.e. provider stops claiming or license status changes), the child care home, the provider, and the responsible principals and responsible individuals will still be placed on the National Disqualified List (NDL).

The sponsoring organization must continue to pay any claims for reimbursement for eligible meals served until the serious deficiency(ies) is corrected or the child care home's agreement is terminated, including the period of any administrative review.

The sponsoring organization must immediately terminate the child care home's agreement and disqualify the child care home when the administrative review official upholds the sponsoring organization's proposed termination and proposed disqualification, or when the child care home's opportunity to request an administrative review expires. At the same time the notice is issued, the sponsoring organization must provide a copy of the termination and disqualification letter to MDHSS-BCFNA within 15 days of terminating and disqualifying the home and the home provider.

However, if the serious deficiency(ies) constitutes an imminent threat to the health or safety of participants, or the child care home has engaged in activities that threaten the public health or safety, the sponsoring organization must follow the procedures listed below rather than those procedures discussed previously.

Suspension, Proposed Termination and Disqualification due to imminent threat:

If State or local health or licensing officials have cited a child care home for serious health or safety violations, the sponsoring organization must immediately suspend the home's CACFP participation prior to any formal action to revoke the home's licensure or approval. If the sponsoring organization determines that there is an imminent threat to the health or safety of participants at a child care home, or that the child care home has engaged in activities that threaten the public health or safety, the licensing agency cannot make an immediate onsite visit, the sponsoring organization must immediately notify the appropriate State or local licensing and health authorities and take action that is consistent with the recommendations and requirements of those authorities. An imminent threat to the health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies; however, the sponsoring organization must use the procedures in this paragraph to provide the child care home notice of the suspension of participation, serious deficiency, and proposed termination of the child care home's agreement.

The sponsoring organization must notify the child care home that its participation has been suspended, that the child care home has been determined seriously deficient, and that the sponsoring organization proposes to terminate the child care home's agreement for cause. The sponsoring organization must provide a copy of the notice to MDHSS-BCFNA within 15 days of sending notice to the child care home. The notice must:

- Specify the serious deficiency(ies) found and the child care home's opportunity for an administrative review of the proposed termination in accordance with 7CFR§226.6(l);
- State that participation (including all Program payments) will remain suspended until the administrative review is concluded;
- Inform the child care home that if the administrative review official overturns the suspension, the child care home may claim reimbursement for eligible meals served during the suspension provided appropriate records have been maintained;

- Inform the child care home that termination of the child care home's agreement will result in the placement of the child care home, the provider and the responsible principals and responsible individuals on the National Disqualified List; and
- State that if the child care home seeks to voluntarily terminate its agreement after receiving the notice of proposed termination, the child care home will still be terminated for cause and disqualified.

The sponsoring organization must immediately terminate the child care home's agreement and disqualify the child care home when the administrative review official upholds the sponsoring organization's proposed termination, or when the child care home's request for an administrative review expires.

A sponsoring organization is prohibited from making any Program payments to a child care home that has been suspended until any administrative review of the proposed termination is completed. If the suspended child care home prevails in the administrative review of the proposed termination, the sponsoring organization must reimburse the child care home for eligible meals served during the suspension period.

When a sponsoring organization considers a home seriously deficient, the sponsoring organization shall send a letter to the provider detailing the reason(s). A copy of the letter must be sent to MDHSS-BCFNA. The first paragraph identifies the date(s) of monitoring. This notification should appear as the second paragraph of the letter:

Sponsoring organization staff are required to conduct unannounced on-site visits after the period for corrective action has elapsed.

- a. If the problems have been fully and permanently corrected after the period of corrective action has elapsed, a letter should be written stating that problems have been corrected and the serious deficiency has been temporarily deferred. However, unannounced follow-up reviews must be conducted within the first month to ensure that problems remain corrected. If a follow-up review reveals that the same serious deficiencies continue to exist, the home shall be immediately proposed for termination and disqualification.
- b. If, after the corrective action period has elapsed, the home still has serious deficiencies, the home shall immediately be proposed for termination and disqualification.

A copy of the letter shall be forwarded to MDHSS-BCFNA within 15 days of sending the notice to the child care home.

When a sponsoring organization proposes to terminate its Program agreement with a child care home for cause, the child care home must be provided an opportunity for an administrative review of the proposed termination. The administrative review process must meet the standards as described in Chapter 12.

A family child care home that fails to correct its serious deficiency(ies) will be placed on the NDL. Once included on the NDL, the child care home will remain on the list until such time as USDA's Food and Nutrition Service, in consultation with MDHSS-BCFNA, determines that the serious deficiency(ies) that led to their placement on the list has(ve) been corrected, or until seven years have elapsed since its agreement was terminated for cause. However, if the child care home has failed to repay debts owed under the Program, they will remain on the list until the debt has been repaid.

If a sponsoring organization signs an agreement with a provider to participate in CACFP who is currently on the NDL, the sponsoring organization will:

- Be declared seriously deficient by MDHSS-BCFNA under the terms of 226.6(c)(3)(ii)(B):
- Immediately terminate the agreement with the home: and
- Stop all reimbursement payments.